

ESTTA Tracking number: **ESTTA33851**

Filing date: **05/24/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Vitaline Corporation		
Entity	Corporation	Citizenship	Nevada
Address	9725 s.w. commerce Cr A6, Wilsonville, OR 97070 UNITED STATES		

Name	Enzymatic Therapy, Inc.		
Granted to Date of previous extension	06/04/2005		
Address	825 Challenger Drive Green Bay, WI 54311 UNITED STATES		

Attorney information	Janet F. Satterthwaite Venable LLP 575 7th St NW Washington, DC 20004 UNITED STATES jfsatterthwaite@venable.com, trademarkdocket@venable.com Phone: 202-344-4974		
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Applicant Information

Application No	78339327	Publication date	04/05/2005
Opposition Filing Date	05/24/2005	Opposition Period Ends	06/04/2005
Applicant	RightSize Health & Nutrition Corporation 3700 Mansell Rd Suite 220 Alpharetta, GA 30022 UNITED STATES		

Goods/Services Affected by Opposition

Class 005.

All goods and services in the class are opposed, namely: Vitamin with integrated appetite manager/controller

Attachments	enzyvita.pdf (3 pages)
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Signature	/Janet Satterthwaite/
Name	Janet F. Satterthwaite
Date	05/24/2005

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

ENZYMATIC THERAPY, INC.
And VITALINE CORPORATION

Opposers,

v.

RIGHTSIZE HEALTH &
NUTRITION CORPORATION,

Applicant.

Opposition No. _____
Mark: VITALEAN
Serial No: 78/339327

Atty Ref. No.: 37517-218202

BOX: TTAB FEE

NOTICE OF OPPOSITION

In the matter of the application for registration of the trademark of RightSize Health & Nutrition Corporation shown in Application Serial No.78/339327, filed on December 11, 2003, and published for opposition in the Official Gazette on April 5, 2005, Opposers, Enzymatic Therapy, Inc, 825 Challenger Drive Green Bay Wisconsin 54311, ("Enzymatic Therapy"), and Vitaline Corporation, 9725 S.W. Commerce Cr. A6 Wilsonville Oregon 97070 ("Vitaline") each believe that it will be damaged by registration of the mark shown in said Application and hereby oppose the same.

As grounds in support of this opposition, Opposers assert the following:

1. Opposer Enzymatic Therapy, Inc. is a Wisconsin corporation which manufactures and sells dietary supplements in the United States and elsewhere.
2. Opposer Vitaline Corporation is a wholly owned subsidiary of Enzymatic Therapy, Inc.

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3. Vitaline Corporation owns the U.S. Trademark Registration No. 214642 issued November 2, 1982 for the mark VITALINE for use in connection with dietary supplements. Such registration is in full force and effect.

4. Opposers, through Vitaline Corporation, have been using the mark VITALINE since at least as early as November, 1972 in connection with dietary supplements. "Enzymatic Therapy" or "Opposers" will collectively refer to Enzymatic Therapy and Vitaline Corporation as applicable.

5. Opposers' mark have been in use in commerce since prior to any date of first use that can be alleged by Applicant.

6. The subject application was filed on an intent-to-use basis on December 11, 2003, and covers "Vitamin with integrated appetite manager/contoller." On information and belief, Applicant did not use its mark in commerce before December 11, 2003.

7. Opposers' goods offered under the mark VITALINE are similar or related to Applicant's goods covered in the subject application and intended to be offered under the mark VITALEAN.

8. Upon information and belief, Applicant's goods intended to be offered under the mark VITALEAN travel in the same channels of trade and are offered to the same consumers as Opposers' goods offered under the mark VITALINE.

9. Applicant's mark VITALEAN is so similar to Opposers' mark VITALINE that Applicant's use and registration of its mark to identify its goods is likely to cause confusion and lead to deception as to the source of origin and/or the sponsorship of Applicant's goods.

10. The mark VITALEAN is so similar to Opposers' mark VITALINE that Applicant's use and registration to identify its goods is likely to cause confusion and lead to

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deception as to the source of origin and/or the sponsorship of Applicant's goods and/or Opposers' goods, and Opposers will be injured.

WHEREFORE, Opposers pray that said Application Serial No. 78/339327, be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposers.

Because this document is being electronically, it is not being submitted in triplicate.


Please deduct the \$300 fee (1 class) and any additional fees from Deposit Account 22- 0261.

Opposers appoint Janet Satterthwaite, Mark B. Harrison, Andrew D. Price and Jacqueline Levasseur Patt along with the law firm of Venable LLP to transact all business on its behalf in connection with this Opposition.

Respectfully submitted,

ENZYMATIC THERAPY, INC.

By:



Janet F. Satterthwaite
Attorney for Opposer

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Dated: May 24, 2005

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